IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

Bail Appl..No. 3881 of 2007()

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CRIME NO.23/07 OF ARYANAD EXCISE RANGE.

PETITIONER/ACCUSED

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DEEPA, AGED 25 YEARS, D/O. OMANA,
KUNNUMPURATHU VEEDU, ARYANAD, NEDUMANGAD,
TRIVANDRUM.

BY ADV. SRI.T.A.UNNIKRISHNAN
SRI.K.SATHEESH KUMAR

RESPONDENTS: COMPLAINANT

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STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI. P.N. SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 02/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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**B.A.NO. 3881 OF 2007**

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Dated this the 2nd day of July, 2007

**ORDER**

Application for anticipatory bail. The petitioner is the 2nd accused. She was allegedly found to keep in her possession 10 litres of arrack. Altogether, there were three accused persons. They had a total quantity of 30 litres of arrack with them. The 1st accused is a man. 2nd and 3rd accused are women. All the three were intercepted. But as there was no woman official in the party, the petitioner and the 3rd accused could not be arrested. The 1st accused was arrested at the spot on 25/5/07. The petitioner and the co-accused (3rd accused) were not arrested. The petitioner apprehends arrest at any moment.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The petitioner is a

woman aged about 25 years. Unjustified arrest and incarceration would work out great prejudice and hardship to the petitioner. In these circumstances, it is prayed that directions under Sec.438 of the Cr.P.C. may be issued.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor points out that it was a clear case of detection of the offence by the officials. The petitioner and the co-accused (3rd accused) could not be arrested as no woman official was available. The seizure mahazar and occurrence report clearly show the complicity of the petitioner. There are no circumstances justifying the invocation of the discretion under Sec.438 of the Cr.P.C., submits the learned Public Prosecutor.

4. I find merit in the opposition by the learned Public Prosecutor. This, I am satisfied, is certainly a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction. She must then seek regular bail in the normal and ordinary course. There are no circumstances justifying the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C.

5. In the result, this application is dismissed. Needless to say, if the petitioner surrenders before the Investigating

Officer or the learned Magistrate having jurisdiction and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

Sd/-

**(R. BASANT, JUDGE)**

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P.S. to Judge